REMARKS

This Amendment is in response to the Office Action mailed July 28, 2009. With this Amendment Claims 1-16, 19, 31 and 34 are amended and the remaining claims are unchanged. This Amendment is filed concurrently with a Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b) and a Request for Continued Examination. Reconsideration and withdrawal of the rejections are respectfully requested in view of the following remarks.

I. Rejection under §112

In the Office action, Claim 1 was rejected as purportedly being indefinite. Claim 1 has been amended to recite, in part "an administrator establishes rules for controlling". Applicant believes the rejection has been overcome. Withdrawal of the rejection is requested.

II. Rejections under §101

In the Office Action Claim 17 was rejected under 35 U.S.C. §101 as purportedly being directed to non-statutory subject matter. Applicant respectfully disagrees with the rejection, but has cancelled claim 17 with this amendment, thereby rendering the rejection moot.

III. Nonstatutory Double Patenting Rejection

The Examiner has provisionally rejected claim 1 based on obviousness-type double patenting as being unpatentable over claim 1 of Application No. 10/799351. Because the rejection is provisional, applicant will address the rejection when, and if, it is no longer provisional.

IV. Cited References

The following references have been cited in the rejections:

Claim 1: US 6,282,712 (Davis) in view of US 2003/0061323 (East)

Claims 2, 3 and 16: Davis in view of East and US 7,519,964 (Islam) (Applicant notes that the Office action included an apparent typographical error, which incorrectly designates Islam as patent number 7,219,964).

Claims 4-9 and 11-15: Davis in view of East, Islam, and US 2003/0200300 (Melchione).

Claim 10: Davis in view of East, Islam, Melchione, and US 2004/0255291 (Sierer).

Claims 17-18: Islam in view of Melchione and Davis.

V. Rejections under §103

A. Claim 1

In the Office Action Claim 1 was rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over Davis in view of East. The Applicant has reviewed the cited references and must respectfully disagree. Nonetheless, for the sole purpose of expediting prosecution, Applicant has amended Claim 1 in a manner which Applicant believes overcomes the rejection.

Amended Claim 1 recites, in part, "an administration application programming interface (API) through which an administrator defines distribution groups including an evaluation group and a general group, and establishes distribution rules associated with each group, the distribution rules specifying the distribution of software updates to child update service nodes and client computers included in the respective distribution groups, the rules associated with the

evaluation group specifying immediate distribution to the evaluation group, the rules associated with the general group specifying withholding distribution until authorization is received based on the evaluation." Thus, Claim 1 requires defining at least two groups including (a) an evaluation group and (b) a general group and (c) rules specifying immediate distribution to the evaluation group and (d) rules specifying withholding distribution until authorization is received based on the evaluation.

Embodiments described in the specification can thereby achieve download efficiencies and savings, as well as scalability and extensibility. Application, [0035]. Support for the amendment can be found at least in paragraphs [0031] - [0033] of the published Application.

Although Davis discusses "automatically installing software on heterogeneous computer systems"" (Davis, e.g., Abstract), Davis apparently does not discuss or reasonably suggest defining two groups of computing devices, wherein one group is an evaluation group and one group is a general group, and wherein software updates are immediately distributed to the evaluation group but withheld from the general group until distribution is authorized based on the evaluation.

Although East discusses a hierarchical system for centralized management of thin clients, East apparently does not discuss or reasonably suggest defining two groups of computing devices, wherein one group is an evaluation group and one group is a general group, and wherein software updates are immediately distributed to the evaluation group but withheld from the general group until distribution is authorized based on the evaluation.

Therefore, Davis and East either together or in combination fail to teach or reasonably suggest each and every element of claim 1. For at least the foregoing

reasons, claim 1 and its dependent claims are believed to be allowable. Applicant respectfully requests withdrawal of the rejection.

B. Claims 2, 3 and 16

In the Office Action Claims 2, 3 and 16 were rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over Davis in view of East and Islam. The Applicant has reviewed the cited references and must respectfully disagree.

As admitted by the Office, Davis and East do not explicitly disclose wherein the configuration interface exposes a get configuration interface call which returns configuration values to the update service node. Applicant traverses the Office's assertion that the elements of Claims 2, 3 and 16 were well known in the art at the time of the invention, as taught by Islam.

Islam describes a system for assembling and compiling a set of source code and related resource files on a domain administration server coupled to an application repository. Islam fails to discuss an administration application programming interface (API) through which an administrator defines distribution groups including an evaluation group and a general group, and establishes distribution rules associated with each group, the distribution rules specifying the distribution of software updates to child update service nodes and client computers included in the respective distribution groups, the rules associated with the evaluation group specifying immediate distribution to the evaluation group, the rules associated with the general group specifying withholding distribution until authorization is received based on the evaluation, as recited in claim 1.

As such, Islam fails to compensate for the deficiencies of Davis or East. Claims 2, 3 and 16 are therefore believed to be allowable over the cited references.

In addition, in would not have been obvious to combine Davis, East and Islam in the manner suggested by the office. The different manners and contexts in which the systems of Davis, East and Islam operate suggest that the proposed combination would render any or all of these systems unsatisfactory for their intended purposes and/or change the principle of operation of the references. (See MPEP § 2143.01). For at least this additional reason, Claims 2, 3 and 16 are allowable over the cited references.

C. Claims 4-9 and 11-15

In the Office Action Claims 4-9 and 11-15 were rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over Davis in view of East, Islam and Melchione. The Applicant has reviewed the cited references and must respectfully disagree.

Melchione relates to a system in which multiple separate customers can enter into separate agreements with a vendor who provides application services to the customer via provider (Melchione, e.g., Abstract). Although Melchione mentions that a policy can be applied to a group of devices (e.g., Melchione [0059]), Melchione does not appear discuss defining distribution groups including an evaluation group and a general group, and establishes distribution rules associated with each group, the distribution rules specifying the distribution of software updates to child update service nodes and client computers included in the respective distribution groups, the rules associated with the evaluation group specifying immediate distribution to the evaluation group, the rules associated with the general group specifying withholding distribution until authorization is received based on the evaluation, as recited in claim 1.

For at least this reason, claims 4-9 and 11-15 are believed to be allowable over the cited references. Applicant respectfully requests withdrawal of the rejection.

D. Claim 10

In the Office Action Claim 10 was rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over Davis in view of East, Islam, Melchione and Sierer. The Applicant has reviewed the cited references and must respectfully disagree.

As acknowledged by the Office, and agreed to by the Applicant, none of Davis, East, Islam and Melchione disclose a Boolean value in the interface call. Applicant disagrees that Sierer makes up for this deficiency.

As presently understood by the undersigned, Sierer relates to programmatically generating an application system installer for programmatic deployment of an application system onto a target system (Sierer, [0026]). However, Sierer apparently does not discuss defining distribution groups including an evaluation group and a general group, and establishes distribution rules associated with each group, the distribution rules specifying the distribution of software updates to child update service nodes and client computers included in the respective distribution groups, the rules associated with the evaluation group specifying immediate distribution to the evaluation group, the rules associated with the general group specifying withholding distribution until authorization is received based on the evaluation, as recited in claim 1.

Accordingly, Sierer fails to compensate for the deficiencies of Davis and East. Therefore, claim 10 is allowable for at least the reasons given above with respect to

claim 1, from which claim 10 ultimately depends. Withdrawal of the rejection is respectfully requested.

E. Claims 17-18

In the Office Action Claims 17-18 were rejected under 35 U.S.C. §103(a) as purportedly being unpatentable over Islam in view of Melchione and Davis. The Applicant has reviewed the cited references and must respectfully disagree.

As discussed above, claim 17 has been cancelled without prejudice in this amendment. Therefore the rejection of claim 17 is moot.

Amended Claim 18 recites, in part, "a create computer target group through which at least two target groups are defined including an all-computers group and an evaluation target group for evaluating software updates prior to distribution to the all-computers group".

As discussed above with respect to claims 1 - 16, as presently understood by the undersigned, Islam and Davis fail to teach or reasonably suggest defining computer groups in which there is an evaluation group that evaluates software updates prior to distribution to a general group of computing devices.

Melchione relates to a system in which multiple separate customers can enter into separate agreements with a vendor who provides application services to the customer via provider (Melchione, e.g., Abstract). Although Melchione mentions that a policy can be applied to a group of devices (e.g., Melchione [0059]), Melchione does not appear to discuss or reasonably suggest defining a particular evaluation group that evaluates software updates prior to distribution of the software update to an all-computers group. For at least this reason, claim 18 is believed to be allowable.

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been

obvious, but whether the claimed invention as a whole would have been obvious. (See MPEP § 2141.02. However, the Office's rejection appears to fail to consider claim 18 as a whole. Rather, the rejection parses claim 18 into component elements and uses the elements like a dictionary to find references supporting the rejection, apparently without consideration of the combination of the elements as a whole.

When considered as a whole, however, it would not have been obvious to combine the elements in the manner recited in claim 18. As described in the specification, the combination of elements claimed can offer significant benefits in terms of local distribution control and download efficiency, as well as savings in communication bandwidth. Accordingly, for at least this additional reason, claim 18 is allowable over the cited references.

F. New Claims 19 – 20

With this amendment, new claims 19 and 20 have been added. Support for these new claims can be found at least in paragraphs [0031] – [0033] of the published Application. For at least the reasons discussed above, claims 19 and 20 are believed to be allowable over the art of record. In addition, claims 19 and 20 include elements that further distinguish these claims from the art of record.

VI. CONCLUSION

Accordingly, in view of the above amendment and remarks it is submitted that the claims are patentably distinct over the prior art and that all the rejections to the claims have been overcome. Reconsideration and allowance of the pending claims are respectfully requested. If the Examiner believes, after this amendment, that the

application is not in condition for allowance, the Examiner is requested to call the Applicant's attorney at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee that is not covered by an enclosed check please charge any deficiency to Deposit Account No. 50-0463.

Respectfully submitted,

Microsoft Corporation

Date: December 20, 2010

By: /Damon A. Rieth/

Damon A. Rieth Reg. No.: 52,167
Attorney for Applicants
Direct telephone (425) 421-2377
Microsoft Corporation
One Microsoft Way
Redmond WA 98052-6399

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December 20, 2010
Date

/Eric Matt/
Eric Matt

Type of Response: Amendment
Application Number: 10/537720
Attorney Docket Number: 304393.02
Filing Date: 06/07/2005